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ABSTRACT

Although Mississippi has no statutes for granting tenure to public school employees, state laws passed in 1953, 1974, and 1977 do provide for due process in case of teacher suspension or dismissal. To determine to what extent the state's 153 public school districts were implementing employee due process under the 1977 "School Employment Procedures Act" (SEPA), a survey was conducted of all school district superintendents. Of the 77 respondents, about two-thirds are committed to some kind of written board policy pertaining to SEPA's provisions for employee due process. In the numerous court cases involving the SEPA, thus far, the courts have ruled that school boards and administrators must adhere rigidly to statutory due process. However, decisions in such cases have tended to support board decisions when due process was followed and reasonable grounds were given for dismissal. Although SEPA has already given public school employees needed protection without diminishing the discretionary dismissal powers of Mississippi school boards, further changes in the law are likely. (JBM)

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THE MISSISSIPPI SCHOOL EMPLOYMENT PROCEDURES ACT AND SELECTED LITIGATION ARISING FROM ITS APPLICATION

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Mississippi public school employees do not have legal tenure. However, a series of legislative acts beginning with the passage of House Bill No. 11 by the Extraordinary Session of 1953 and a number of court cases which have arisen because of the interpretation of due process procedures by Mississippi School Boards have tended to establish a firm basis for employment, promotion, retention, and discharging of public school personnel.

There are considerable Federal and State Constitutional strictures on due process procedures for public school employees. These provisions are not the main thrust of this presentation except where they were involved in court decisions rendered in interpreting Mississippi statutes.

House Bill No. 11 (1953) prescribed the method for selecting, employing, contracting with and paying superintendents, principals, teachers and other public school employees. Principals must be recommended to the school board by the superintendent by February 15 of each year. The principal must recommend the teachers who are to be employed in each school to the superintendent by April 1. The board may reject any nomination in which case the principal must recommend another person. (These dates were changed by subsequent legislation.)

Section 26 of House Bill No. 11 specifies the conditions for suspension or termination during any public school employee's contractual period. Professional personnel may be removed or suspended by the superintendent for incompetence, neglect of

duty, immoral conduct, brutality, or other good cause. Prior to suspension the employee must be notified of the charges against him and advised that he is entitled to a public hearing. Notice must be given in writing at least 10 days prior to the hearing. The superintendent was given the same powers as a Justice of the Peace in re the hearing. Subpoenas may be issued and witnesses may be called. Appeal from the hearing may be made to the chancery court.

The 1974 Mississippi Legislature passed an act entitled the, "Mississippi Fair Employment Act," which specified due process procedures in cases of teacher suspension or dismissal. The 1977 legislature substantially supplanted the FEPA by passage of House Bill 633, "The School Employment Procedures Act," (SEPA). SEPA is the statutory basis for suspending or dismissing a public school employee. The basic provisions of SEPA follow.

Section 1. It was not the intent of the legislature to establish a tenure law.
It was the intent of the legislature to establish procedures for providing public school employees with notice of non-renewal of contract.

Section 2. (a) Notice of non-renewal must be given in writing by February 1 for a superintendent.
(b) Principals who are terminated must be notified by March 1.
(c) Other professional educators must be given written notice on or before April 8.

Section 3. An employee who has received notice of non-renewal is entitled to:
(a) written notice of the reasons for non-renewal at least 5 days prior to any hearing.
(b) an opportunity for a hearing at which he may present matters relevant to the reasons given for non-renewal.
(c) a fair and impartial hearing before the

the board or a hearing officer.

(d) representation by legal counsel at own expense.

If no hearing is requested the decision of the board is final.

Section 4. (1) When a hearing is requested, the board must set the time, place, and date and notify the employee in writing. The hearing must not be sooner than 5 days nor later than 30 days from the day of the request. The hearing may be held before the board or before a hearing officer appointed by the board; but, the hearing officer may not be the person responsible for the decision not to renew.

(2) The employee has a right to be present, to be represented by counsel, and to call witnesses in his behalf.

(3) The board shall keep a stenographic record of the hearing proceedings.

(4) The employees shall receive written notice of the decision within 30 days if a hearing officer is used and within 10 days if the hearing is before the board. The employee has the right to appear before the board makes its final decision if a hearing officer was used.

(5) The board or hearing officer is not bound by common law or statutory rules of evidence.

(6) If a decision favorable to the employee is reached, the board has the authority to issue a 1 year contract forthwith.

(7) The board or hearing officer may issue subpoenas.

Section 5. (1) Aggrieved employees are entitled to a judicial review of board proceedings.

(2) Such appeal shall be to the chancery court where the school district is located.

(3) Such review is limited to a review of the record of the hearing to determine if there was sufficient evidence, if the board was arbitrary or capricious, and/or in violation of some statutory or constitutional act.

(4) No relief shall be granted upon the courts finding of harmless error.

(5) Appeals from the chancery court's decision may be made to the Supreme Court.

In summary, these acts did not establish tenure; but, they did establish statutory due process procedures in cases of sus-

pension or dismissal of professional public school employees.

Superintendents of the 153 public school districts which have schools, i.e., professional employees were surveyed as part of this study. Seventy-seven superintendents responded.

Respondents were asked if their school district has written guidelines for implementing employee due process under the Mississippi SEPA. Fifty-three of the 77 respondents replied that their school district does have written due process guidelines intended to implement the SEPA. Two other respondents reported that their boards were in the process of adopting such guidelines. Thus, only 22 of the districts sampled had no written board policy pertaining to SEPA at the time of the study. Most of these 22 superintendents reported that their district is using the State Department of Education guidelines for SEPA without modification.

Forty-one of the 53 superintendents reported tnat their board had written board policies pertaining to implementation of SEPA. The remaining 12 respondents indicated that their board had simply adopted, as policy, the State Department of Education recommended guidelines. Thus, 34 of the 77 responding districts are relying on the SDE guidelines without further amplification; whereas, 41 school districts have more elaborate policy statements and two were developing them at the time these data were collected. The 41 school board policies vary from very sketchy outlines of procedures to 25-30 page documents which have been very carefully written.

Respondents were asked to report any litigation their district had had under FEPA or SEPA since 1977. Fifty-five of the superintendents indicated that their district has had no litigation under SEPA since 1977. However, 22 respondents reported litigation during this period. This is almost 30 percent of the districts reporting. Fifteen of the 22 districts which have had litigation under SEPA have been generally successful in defending their due process procedures. Three districts have been generally unsuccessful and four districts had pending litigation at the time of the study. Fifteen districts reported litigation in Mississippi Chancery courts. Four appeals were made under SEPA to School Boards and resolved at that level. Nine cases were appealed from Chancery decisions to the Mississippi Supreme Court. Ten cases had reached Federal District courts and four cases were reported as having reached the Federal Appeals courts.

In summary, it seems that about two-thirds of the school districts have developed some kind of written board policy. About 30 percent of them have had litigation pertaining to employee due process procedures since passage of FEPA and its modification by SEPA since 1977.

A considerable amount of litigation has arisen since the passage of FEPA in 1974 and its changes by SEPA in 1977.

Singleton v. Jackson Municipal Separate School District (1969)

Hiring, assignment, promotions, pay, dismissal must be without consideration of race, color, or national origin.

Many subsequent cases alleged violation of strict adherence to the Singleton principles.

Andrews v. Drew Municipal Separate School District (1973)

The Board has a right to adopt reasonable employee qualifications including good character; but it may not dismiss unwed parents on the theory that their mere presence might adversely affect the morals of children. There must be evidence.

Pickens v. Okolona Muncipal Separate School District (1976)

Singleton does not apply where RIF is not related to desegregation procedures.

Pulliam v. Houston Municipal Separate School District (1979)

Appellant was not given written notice as required by statute. Even though it was shown that he knew he would not be rehired, he was entitled to relief because statutory due process was not given.

Hardy v. Porter (1978)

A system of promotion from within is constitutional.

Jones v. Benton County Board of Education (1980)

Failure to give written notice of non-renewal to a co-principal operated to automatically renew his contract.

Calhoun County Board of Education v. Hamblin (1978)

Timely notice and hearing criteria must be met. The Board had the right to fire a principal since it followed the statute.

Lamar County Board of Education v. Saul (1978)

The Board had no right to rescind its order of re-employment of a principal more than 7 days after the hearing.

Warner v. Jackson Municipal Separate School District (1978)

Timely notice was given by the principal. This meets the requirements of the statute.

McDonald v. East Jasper Consolidated School District (1977)

Timely notice is mandatory. Oral notification is not sufficient.

Jackson v. Oktibbeha County Board of Education (1977)

Teacher who goes from school to school entitled to timely notice. Failure to give it resulted in automatic renewal.

McDonald v. Mims et al (1978)

Protection of FEPA operates to create a property interest in continued employment.

McCormick v. Attala County (1976)

The practice of replacing black teachers with black teachers and white teachers with white teachers is unconstitutional since it constitutes a racial clasification of applicants.

Tutwiler v. Jones (1981)

Statutory provision that the superintendent may remove principals or teachers must be construed as limited to those who request no hearing. Affirmed the principle

that only the board has the real power to fire anyone.

Jordon v. Cagle (1979)

Failure to renew may not be based on teacher's exercise of free speech. School board has the right to conduct the hearing.

Cousin v. Board of Trustees of Houston Municipal Separate School District (1981)

Mississippi 6 years statute of limitations applies to SEPA.

Cantrell v. Vickers (1980)

Superintendent's letter of notice is of no effect since school board had already reached a decision not to rehire a ten year teacher. This teacher was not entitled to punitive damages.

Holladay v. West Point Municipal Separate School District (1981)

The board has the right to reassign a principal.

Hamblin v. Calhoun County Board of Education (1978)

Burden of proof at the hearing is not on the superintendent or principal. Burden of proof is on employee to prove that the reasons given have no factual basis.

There have, of course, been other Federal cases than these and there have been numerous cases in chancery court which have not been appealed. The cases reported here are representative of the findings of the courts. Basically, the courts have ruled that the school boards and administrators must adhere rigidly to the statutory due process procedures; but, they have found for the board when due process was followed and when the reasons for dis-

missal were reasonable. The discretionary powers of Mississippi school boards have not been, in our opinion, substantially diminished by the litigation which has arisen because of dismissal cases under FEPA or SEPA. On the other hand, the statutes do appear to be providing public school employees considerable protection from arbitrary and capricious dismissal.

The Mississippi Association of Educators (an affiliate of NEA) is not too happy with the statute. It has, therefore, proposed six changes in the law which it claims will clarify the statute. Some of MAE's claims have merit; but, critics claim some of them are simply an attempt to limit the discretionary powers of the board and the managerial powers of the administration. These proposed amendments may not pass at this time. However, there probably will be changes in the law due to political pressures in the future.